



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MARY F. McTIGUE
DIRECTOR

April 1, 1993
AO-93-10

Mitchell Adams
Commissioner of Revenue
The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street
Boston, MA 02214

Re: Indirect Solicitation

Dear Mr. Adams:

This letter is in response to your January 20, 1993, letter requesting an advisory opinion as to the legality of proposed activities.

You have stated that you would like to know if certain activities constitute an indirect solicitation and, therefore, effectively result in your inability as a state employee to participate in such activities.

Specifically, you have asked if you may participate in any of the following:

- (1) Provision of general advice to a political campaign with regard to fundraising strategies and tactics with respect to particular target populations;
- (2) Identification of certain individuals whose knowledge and affiliations would permit the fundraisers to develop lists of individuals to solicit; and
- (3) Identification of individuals who could be approached as volunteers to work on fundraising activities.

For the reasons set forth below, it is this office's opinion that you may not participate in the first two activities but may participate in a limited manner in the third activity.¹

Section 13 of M.G.L. c.55 provides, in pertinent part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purpose of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. . .

As Commissioner of Revenue you are a "person employed for compensation, other than an elected official, by the commonwealth" or so-called public employee and, therefore, subject to the restrictions set forth in section 13.

Initially, I note that section 13, as well as previous advisory opinions, makes it clear that you may be a member of a political organization. Section 13, however, also makes it clear that no public employee may **directly or indirectly** solicit any thing of value for any political purpose.²

1. This conclusion assumes that the public employee is not using the resources of his or her office in order to identify "individuals who could be approached as volunteers to work on fundraising activities," for example, by providing a list of potential volunteers based upon an office database. Such action would constitute the use of a public resource in violation of the campaign finance laws. See Anderson v. City of Boston, 376 Mass. 178 (1978). See also M.G.L. c.55, s.7 and OCPF-IB-91-01.

2. The term political purpose is discussed in Section I(B) of this office's Interpretative Bulletin OCPF-IB-92-01. While it encompasses a broader range of activity than campaign finance activity generally, it is not without limits. However, it clearly includes the activity contemplated by your question.

In the Office of Campaign and Political Finance's ("OCPF") opinion, the prohibition set forth in section 13 (as well as sections 14-17) is a broad one intended to guard against the potential for corruption or the appearance of corruption by prohibiting not only direct political solicitation by public employees but also indirect political solicitation as well. The term "indirect" is not defined by chapter 55. However, in various advisory opinions, OCPF has interpreted the term, in a manner consistent with its common meaning, to prohibit activities and behavior which a public employee can not engage in directly or which would lead a reasonable person to conclude that a public employee is or may be soliciting funds for a political purpose.

I note that when a popular or common word is used but not defined in a statute (such as the word "indirect"), the word should generally be given its common meaning. In such circumstances, the dictionary is an acceptable source for determining that meaning.³ For example, BLACKS LAW DICTIONARY 773 (6th ed. 1990) defines "indirect," in relevant part, as "Circuitous, not leading to aim or result by plainest course or method or obvious means, roundabout, not resulting directly from an act or cause but more or less remotely connected with or growing out of." Similar definitions will be found in other dictionaries. In the office's opinion, the distinction between a "direct" and "indirect" solicitation and its effect turns not on the magnitude of either the cause or the effect, but entirely on the manner in which the effect has been brought out. Thus, the prohibition against indirect solicitation is designed to prevent a public employee from doing in a roundabout or circuitous manner what the employee can not do directly.

Consistent with the office's opinion, OCPF has advised that a public employee should refrain from any activity which indicates support in a material way for the fundraising efforts of a candidate or political committee. See IB-92-01. See also AO-84-02 (public employee may not permit name to be listed on political committee stationery as officers or members if such stationery is to be used to solicit funds for the political committee), AO-84-06 (public employee may not host or permit a political fundraising party at employee's home), AO-90-04 (public employee may not be featured speaker at a political fundraising event, or AO-91-25 (public employee may not serve on a panel at any event if he or she knows or has reason to know that the fact of his or her participation as a speaker or panelist at such event has or will be used by a political committee or organization for political fundraising purposes).

3. See 2B SINGER, SUTHERLAND STATUTORY CONSTRUCTION, 5th ed., Section 47.07 at 153, Section 47.28 at 248. See also 21 WORDS AND PHRASES 358 (1960).

More specifically related to your question, this office has advised that a public employee may not participate in fundraising meetings or strategy planning. In AO-89-11, OCPF advised that a public employee would be prohibited from undertaking various fundraising activities including "planning, directing or organizing fundraising activities. . ." Thus, it is this office's opinion that the provision of general advice to a political campaign with regard to fundraising strategies and tactics with respect to particular target populations would be considered a prohibited indirect solicitation. Indeed, permitting public employees to participate in this kind of activity arguably has greater potential for abuse than individual solicitation.

Similarly, in AO-88-25 while OCPF concluded that public employees may perform clerical tasks such as data entry preparation of materials for mailing, we also advised that adding the names of friends and relatives to such databases would constitute an indirect solicitation in violation of section 13. What the public employee can not do directly (ask a friend for a contribution) can not be done in a "roundabout" or indirect manner (help someone else to ask the employee's friend). Therefore, it is OCPF's opinion that identification of certain individuals whose knowledge and affiliations would permit fundraisers to develop lists of individuals to solicit would constitute an indirect solicitation in violation of section 13.

The third activity that you identify consists of the identification of volunteers who could be approached to work on fundraising activities on behalf of a political committee. Since section 13 expressly permits a public employee to be a member of a political committee, it is this office's opinion that a public employee may identify or recommend friends, acquaintances or other persons as possible volunteers to work on a campaign provided that the volunteer has not been identified in order to be solicited and has not been identified in order to work on fundraising activities or to provide substantially similar identification of a targeted group that the public employee is prohibited from identifying thereby providing in an indirect way the information the public employee is prohibited from providing in a direct way.

In Anderson, the Supreme Judicial Court commenting on the purposes of M.G.L. c.55, ss.13-15 stated unequivocally that the restrictions set forth in these sections "demonstrate a general legislative intent to keep political fund raising and disbursing out of the hands of non-elective public employees and out of [public building.] Anderson, supra at 186-187. If the described activities were permissible, it is this office's opinion that the general legislative intent articulated by the Court could be easily thwarted through indirect means.

In conclusion, M.G.L. c.55, s.13 prohibits a public

employee's participation in political fundraising activities including (1) providing advice regarding fundraising strategy with respect to specific target populations, (2) identifying other persons to develop solicitation lists or (3) identifying persons who could be approached to work on fundraising activities.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55. Since your questions may raise issues under the conflicts-of-interest law, M.G.L. c.268A, I suggest you contact the State Ethics Commission for further clarification.

Please do not hesitate to contact OCPF should you have additional questions about this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director

cc: Andrew B. Crane, Executive Director
State Ethics Commission